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978-1-107-00812-0 - Processes and Production Methods (PPMs) in WTO Law: Interfacing Trade and Social Goals

Christiane R. Conrad

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PROCESSES AND PRODUCTION METHODS (PPMs) IN WTO LAW

Despite a decades-long debate, starting with the *Tuna-Dolphin* disputes of the 1990s, questions on the status of national regulatory measures linked to processes and production methods in WTO law have remained unsolved. Likewise, labelling requirements relating to unincorporated aspects of a product's life cycle remain strongly contested. Ongoing disputes at the WTO, as well as global social and environmental challenges relating to economic activities show how topical and important the search for adequate answers still is. *Processes and Production Methods (PPMs) in WTO Law* identifies and comprehensively analyses the key legal problems concerning such measures, setting them in the context of the current debate and its economic and regulatory background. Christiane R. Conrad develops a new approach to this debate which draws on the objectives and established economic rationales of the WTO Agreements.

CHRISTIANE R. CONRAD is an attorney at law and in-house lawyer with a telecommunications company in Germany. She was a member of the Collaborative Research Centre 'Transformations of the State' at the University of Bremen, and she has also been a Visiting Fellow at Georgetown University Law Center.

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Interfacing trade and social goals

CHRISTIANE R. CONRAD



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The *Parties* to this Agreement,
Recognizing that their relations in the field of trade and economic
endeavour should be conducted
with a view to raising standards of living,
ensuring full employment,
and a large and steadily growing volume of real income and effective
demand,
and expanding the production of and trade in goods and services,
while allowing for the optimal use of the world's resources in
accordance with the objective of sustainable development,
seeking both to protect and preserve the environment
and to enhance the means for doing so in a manner consistent with
their respective needs and concerns at different levels of economic
development

Marrakesh Agreement Establishing the
World Trade Organization
signed in Marrakesh, Morocco, on 15 April 1994

As of today, 153 countries and other WTO members as well as
29 candidate countries have committed themselves to the above
objectives.

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This book is a revised and updated version of my Ph.D. dissertation, which was accepted by the Law Faculty of the University of Berne in 2008. The sub-title of my dissertation, 'A contribution to the debate on the impact of WTO law on national regulation pursuing social goals', shows the broader context of my doctoral research which led to this book. As a member of the project group 'Social regulation and world trade' at the Collaborative Research Centre 'Transformations of the State', I placed a strong focus on the interplay of national social regulation and international trade, and, in particular, on the status of national regulatory measures under the law of the WTO. I found that despite a decades-long debate, the status of such measures – both from a legal and a political perspective – still remains unresolved. Existing regulatory measures show, that despite legal uncertainty, states do not totally refrain from exercising their power to enact such measures. However, there can be no doubt that the existence of the WTO Agreements and the heated legal and political debates on the legality of certain measures of national social regulation, which have been taking place at an international and, above all, at a transnational level, may lead to a chilling effect on the exercise of national powers. These, however, are still necessary to solve certain problems in cases where no capable institutions at other governance levels are in place. This book analyses the problem and offers a new 'regulatory' perspective, which might help to realize the common goals of national regulators and members of the WTO.

Writing this book would not have been possible without the encouragement, advice, help and support of many people, only a few of whom can be mentioned here. First and foremost, I owe particular gratitude to my supervisor, Professor Thomas Cottier, who inspired me to write this thesis in the first place. His advice and encouragement have been much needed major driving forces throughout my work. I am grateful also to Professor Ernst-Ulrich Petersmann for his comments and for reviewing my dissertation in the proceedings at the Law Faculty of the University of Berne. This work benefited greatly from discussions with scholars and

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ABBREVIATIONS

AAA	Agricultural Adjustment Administration
AB	Appellate Body
AD Agreement	Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti- Dumping Agreement)
CAC	Codex Alimentarius Commission
CAFE	Corporate Average Fuel Economy law
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CFC	Chlorofluorocarbon
DSB	Dispute Settlement Body
DSU	Understanding on Rules and Procedures Governing the Settlement of Disputes
EC	European Community/European Communities
ECOSOC	United Nations Social and Economic Council
EEC	European Economic Community
EU	European Union
FDA	Food and Drug Administration
FTC	Federal Trade Commission
GATS	General Agreement on Trade in Services
GATT 1947	General Agreement on Tariffs and Trade 1947
GATT 1994	General Agreement on Tariffs and Trade 1994
GMO	Genetically Modified Organism
GPA	Agreement on Government Procurement
GSP	Generalized System of Preferences
HS	Harmonized System: Harmonized Commodity Description and Coding System of the World Customs Organization
ICJ	International Court of Justice
ILO	International Labour Organization

ABBREVIATIONS

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IMF	International Monetary Fund
Marrakesh Agreement	Marrakesh Agreement Establishing the World Trade Organization
MEA	Multilateral Environmental Agreement
MFN	Most-Favoured-Nation treatment
MMPA	Marine Mammal Protection Act
NAFTA	North American Free Trade Area
NGO	non-governmental organization
NIOSH	National Institute for Occupational Safety and Health
NIRA	National Industrial Recovery Act
Note	GATT, Annex I Notes and Supplementary Provisions, Ad Article III
NPA	non-physical aspect
NPA measure	national measure linked to an NPA
NRA	National Recovery Administration
OECD	Organization for Economic Cooperation and Development
OJ	Official Journal
OSHA	Occupational Safety and Health Administration
PPM	processes and production methods
PPM measure	national measures linked to a PPM
RIAA	Reports of International Arbitral Awards
SCM Agreement	Agreement on Subsidies and Countervailing Measures
SDT	special and differential treatment of developing countries
SPS Agreement	Agreement on the Application of Sanitary and Phytosanitary Measures
TBT Agreement	Agreement on Technical Barriers to Trade
TED	turtle excluder device
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNEP	United Nations Environment Programme
UNICEF	United Nations International Children's Emergency Fund
VCLT	Vienna Convention on the Law of Treaties

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xxviii	ABBREVIATIONS
WCO	World Customs Organization
WEO	World Economic Organization (fictitious)
WHO	World Health Organization
WTO	World Trade Organization